

**§ 268.402 Time for appeals to the Equal Employment Opportunity Commission.**

(a) Appeals described in § 268.401(a) and (c) must be filed within 30 days of receipt of the dismissal, final action or decision. Appeals described in § 268.401(b) must be filed within 40 days of receipt of the hearing file and decision. Where a complainant has notified the Board's EEO Programs Director of alleged noncompliance with a settlement agreement in accordance with § 268.504, the complainant may file an appeal 35 days after service of the allegations of noncompliance, but no later than 30 days after receipt of the Board's determination.

(b) If the complainant is represented by an attorney of record, then the 30-day time period provided in paragraph (a) of this section within which to appeal shall be calculated from the receipt of the required document by the attorney. In all other instances, the time within which to appeal shall be calculated from the receipt of the required document by the complainant.

**§ 268.403 How to appeal.**

(a) The complainant, the Board, agent or individual class claimant (hereinafter appellant) must file an appeal with the Director, Office of Federal Operations, Equal Employment Opportunity Commission, at PO Box 19848, Washington, DC 20036, or by personal delivery or facsimile. The appellant should use EEOC Form 573, Notice of Appeal/Petition, and should indicate what is being appealed.

(b) The appellant shall furnish a copy of the appeal to the opposing party at the same time it is filed with the Commission. In or attached to the appeal to the Commission, the appellant must certify the date and method by which service was made on the opposing party.

(c) If an appellant does not file an appeal within the time limits of this subpart, the appeal shall be dismissed by the Commission as untimely.

(d) Any statement or brief on behalf of a complainant in support of the appeal must be submitted to the Office of Federal Operations within 30 days of filing the notice of appeal. Any statement or brief on behalf of the Board in

support of its appeal must be submitted to the Office of Federal Operations within 20 days filing the notice of appeal. The Office of Federal Operations will accept statements or briefs in support of an appeal by facsimile transmittal, provided they are no more than 10 pages long.

(e) The Board must submit the complaint file to the Office of Federal Operations within 30 days of initial notification that the complainant has filed an appeal or within 30 days of submission of an appeal by the Board.

(f) Any statement or brief in opposition to an appeal must be submitted to the Commission and served on the opposing party within 30 days of receipt of the statement or brief supporting the appeal, or, if no statement or brief supporting the appeal is filed, within 60 days of receipt of the appeal. The Office of Federal Operations will accept statements or briefs in opposition to an appeal by facsimile provided they are no more than 10 pages long.

**§ 268.404 Appellate Procedure.**

(a) On behalf of the Commission, the Office of Federal Operations shall review the complaint file and all written statements and briefs from either party. The Commission may supplement the record by an exchange of letters or memoranda, investigation, remand to the Board or other procedures.

(b) If the Office of Federal Operations requests information from one or both of the parties to supplement the record, each party providing information shall send a copy of the information to the other party.

(c) When either party to an appeal fails without good cause shown to comply with the requirements of this section or to respond fully and in timely fashion to requests for information, the Office of Federal Operations shall, in appropriate circumstances:

(1) Draw an adverse inference that the requested information would have reflected unfavorably on the party refusing to provide the requested information;

(2) Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party;